HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Appeal No.211 of 2007

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Between:

Agricultural Market Committee,
Jogipet, Medak District,
represented by its Secretary. … Appellant.

And

M. Balaiah and others. ….Respondents.

:: J U D G M E N T ::

Counsel for the appellant : Sri V.V.N. Narayana Rao

8th March, 2007

Per G.S. SINGHVI, C.J.

This is an appeal for setting aside order dated 14-7-2006 passed by the learned Single Judge whereby he nullified G.O.Ms.No.92, dated 19-4-2003 issued by the State Government for cancellation of Memo dated 15-2-2000 vide which the Director of Marketing (for short, 'the Director') was asked to facilitate registration of the plots allotted to

respondent Nos.1 to 6 by Agricultural Market Committee, Jogipet (Medak District) (the appellant herein).

The Facts:

In response to the notice issued by the appellant, respondent Nos.1 to 6 applied for allotment of plots in the market yard at Jogipet. They participated in the auction held on 2-6-1977 and gave highest bids for plot Nos.1 to 6. They deposited 1/4th of the price within the time stipulated in the auction notice. They also offered to deposit the balance amount, but the concerned authority of the appellant did not accept the same because of the pendency of suit for injunction (O.S.No.5 of 1977) filed by some of those who had unsuccessfully participated in the auction in the Court of District Munsif, Jogipet and the order of injunction passed by that court in I.A.No.77 of 1977. After having succeeded in persuading the Court to vacate the order of injunction, the appellant issued notice dated
20-3-1978 for re-auction of the plots except plot Nos.1 to 6. In the meanwhile, respondent Nos.1 to 6 represented to the appellant for extension of time to deposit the balance price. The appellant acceded to their request and passed resolution dated 23-4-1979 for extension of time to deposit the balance amount. As a sequel to this, the appellant issued notice dated 21-11-1980 whereby respondent Nos.1 to 6 were called upon to deposit the remaining amount within 15 days and take steps for construction of shops/godowns with a condition that if they fail to do so, 1/4th amount deposited by them will be forfeited. Respondent Nos.1 to 6 complied with the notice and deposited the balance amount.

After about two years, respondent Nos.1 to 6 filed Writ Petition No.6704 of 1982 for issue of a direction to the non-petitioners i.e. Commissioner for Development and Marketing-cum-Director of

Marketing and the appellant market committee to execute registered documents in their favour in respect of the plots in question. The same was dismissed by the learned Single Judge vide order dated 6-8-1984 with an observation that failure of the petitioners to deposit 3/4th of the bid amount disentitled them from claiming registration of the documents. Writ Appeal No.88 of 1985 filed by respondent Nos.1 to 6 was dismissed by the Division Bench vide its judgment dated 19-4-1989 with an observation that on account of their failure to deposit 3/4th of the bid amount, the appellants (respondent Nos.1 to 6 herein) forfeited their right to have the sale deeds executed.

Notwithstanding the above adverse order and judgment, the appellant neither cancelled the allotment nor refunded the amount deposited by respondent Nos. 1 to 6 pursuant to notice dated 21-11-1980.

After a gap of about ten years, the State Government and the Director exchanged some correspondence in the matter of registration of plots allotted to respondent Nos.1 to 6. Vide letter dated 28-1-2000, Principal Secretary to Government asked the Director to clarify the position. In reply, the Director sent communication No.Rc.II (2) 580/99, dated 10-2-2000 with a request that appropriate order be passed keeping in view the resolution passed by the market committee for deposit of the balance amount and the fact that respondent Nos.1 to 6 had deposited the balance price within the time specified in notice dated 21-11-1980. The government accepted the suggestion of the Director and issued Memo No.924/Mktg.II(2)/2000-2, dated 15-2-2000, whereby he was permitted to register the plots in favour of respondent Nos.1 to 6 subject to the condition of their completing the construction of shops/godowns within a period of two months. However, instead of registering the plots, the Director made further correspondence with

the government and after about one year and four months, the latter issued Memo No.5333/Mktg.I(2)/2000-6, dated 20-6-2001, whereby Memo dated 15-2-2000 was cancelled. Respondent Nos.1 to 6 challenged the same in Writ Petition No.20986 of 2000, which was allowed by the learned Single Judge on the ground of violation of the rules of natural justice. However, liberty was given to the State Government to initiate fresh action for cancellation/revocation of Memo dated 15-2-2000.

Thereafter, the State Government issued show cause notice dated 20-8-2002 to respondent Nos.1 to 6 proposing cancellation of Memo dated 15-2-2000 on the premise that after dismissal of the writ petition and writ appeal filed by them, the plots could not be registered in their favour. Respondent Nos.1 to 6 filed a detailed representation dated 21-9-2002. They relied on order dated March 30, 2001 passed by the Supreme Court in Civil Appeal No.2490 of 2001 and pleaded that acceptance of the balance amount by the market committee amounts to deemed extension of time and, therefore, the allotment should not be cancelled after a long time gap of more than 20 years. The government did not accept the plea of respondent Nos.1 to 6 and issued G.O.Ms.No.92, Agriculture & Co-operation (Mktg.II) Department, dated 19-4-2003, whereby Memo dated 15-2-2000 was cancelled.

The aforementioned decision of the government was challenged by respondent Nos.1 to 6 in Writ Petition No.7571 of 2003. They pleaded that by virtue of resolution dated 23-4-1979 passed by the appellant and deposit of the balance amount pursuant to notice dated 21-11-1980, a valuable right has been acquired by them and the allotment made in their favour could not have been cancelled after more than two decades. The learned Single Judge took cognizance of resolution dated 23-4-1979 passed by the appellant,

recommendations made by the Director vide Memo dated 10-2-2000 and observed:

> "From the above, it is clear that the 3rd respondent-Agricultural Market Committee passed a resolution for accepting 3/4th of bid amounts from the petitioners, but such resolution was not brought to the notice of this Court in the earlier round of litigation between the parties. Under those circumstances, the whole case has been reopened and the Government, after due consideration of the said letter of the Director of Marketing, through its Memo No.924/Mktg.II(2)/2000-2, dated 15-2-2000, permitted the Director of Marketing to register the plots in favour of the petitioners herein, subject to condition that they shall take up the construction of shops/godowns within a period of two months from the date of registration of plots for development of market yard. Therefore, the proceedings in the earlier round of litigation, have no relevance for consideration in this Writ Petition."

The learned Single Judge then referred to conditions No.8 and 20 of the auction notice and held that resolution dated 23-4-1979 passed by the appellant to extend the time for deposit of the balance amount had the effect of condoning the breach of the conditions of auction and it was not open to the State Government to indirectly cancel the allotment after a gap of 25 years.

Sri V.V.N. Narayana Rao, learned counsel for the appellant argued that in view of order dated 6-8-1984 passed by the learned Single Judge in Writ Petition No.6704 of 1982 and judgment dated 19-4-1989 rendered by the Division Bench in Writ Appeal No.88 of 1985, the State Government could not have ordered registration of plots in favour of respondent Nos.1 to 6 and, therefore, the latter did not commit any illegality by cancelling Memo dated 15-2-2000. He further argued that while adjudicating the legality of G.O.Ms.No.92, dated 19-4-2003,

it was not permissible for the learned Single Judge to rely on resolution dated 23-4-1979 passed by the appellant for extension of time for deposit of the balance amount by respondent Nos.1 to 6 because the same had not been brought to the notice of the learned Single Judge, who decided Writ Petition No.6704 of 1982 and the Division Bench, which decided Writ Appeal No.88 of 1985. In reply to the Court's query, learned counsel fairly conceded that on account of pendency of O.S.No.5 of 1977, the concerned authority of the appellant did not accept the balance price offered by respondent Nos.1 to 6 in the year 1978-79, but argued that the allotments made in their favour stood automatically cancelled because they failed to deposit the balance amount in furtherance of resolution dated 23-4-1979. In support of this argument, Sri V.V.N. Narayana Rao strongly relied on clauses 8, 12, 13 and 14 of the auction notice.

We have given serious thought to the arguments of the learned counsel, but have not felt persuaded to interfere with the order under challenge. It is true that the writ petition and writ appeal filed by respondent Nos.1 to 6 for issue of a direction to the Director and the appellant market committee to execute registered documents in their favour were dismissed by the learned Single Judge and the Division Bench on the premise that they had not deposited the balance amount in accordance with the conditions of auction, but a careful reading of order dated 6-8-1984 passed by the learned Single Judge and judgment dated

19-4-1989 of the Division Bench makes it clear that attention of the Court had not been drawn to resolution dated 23-4-1979 passed by the appellant for extension of time for deposit of the amount and the fact that in pursuance of that resolution and subsequent notice issued by the appellant, respondent Nos.1 to 6 had deposited the balance price.

In this view of the matter, it must be held that the Director did not commit any illegality by making a recommendation to the government to order registration of plots in their favour and the latter rightly accepted the suggestion of the Director. Subsequent decision of the government which is reflected in resolution dated 20-6-2001 and G.O.Ms.No.92, dated

19-4-2003 proceeded on an erroneous premise that the adjudication of Writ Petition No.6704 of 1982 and Writ Appeal No.88 of 1985 operated as a bar to the entertaining of the request made by respondent Nos.1 to 6 for registration of plots in their favour. In our opinion, the Director was not only entitled, but was also justified in making recommendation for registration of the plots in favour of respondent Nos.1 to 6 because in the first instance, the offer made by respondent Nos.1 to 6 to deposit the balance price in accordance with the conditions of auction was not accepted by the competent authority of the appellant and subsequently they paid the balance price in the light of resolution dated 23-4-1979 whereby the appellant extended the time for deposit.

It is neither the pleaded case of the appellant nor any material has been produced by the government to show that respondent Nos.1 to 6 had misrepresented the facts or had manipulated to deposit the balance amount in the year 1980 by playing fraud on the competent authority of the market committee. We, therefore, hold that G.O.Ms.No.92, dated

19-4-2003 issued by the State Government for cancellation of Memo dated 15-2-2000 was wholly arbitrary and unjust and the mere fact that the said G.O. was issued after giving notice and opportunity to respondent Nos.1 to 6 to make representation is not sufficient for sustaining the same.

At this stage, we consider it proper to advert to clauses 8, 12, 13,

14 and 20 of the conditions of auction notified by the appellant. The same read as under:

> "8. Those who have been allotted the plots in the auction, they should pay 1/4th amount of the cost of the plot on the day of auction and rest of the 3/4th amount should be paid within six weeks from the date of the auction. And they can register the same.
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> 12. The allottees of the plots should make construction in the said plot within six months from the date of allotment and if they fail to do so, the market committee shall take over the possession of such plot and again put the same for auction and the earlier allottee will forfeit the deposit amount.
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> 13. If the allottees of the plot fail to construct the shop as per the lay of the building plan, they can forfeit the 1/4th deposit amount or the total value of the plot if paid and the market committee will take over the possession of such plot and put the same again for auction.
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> 14. The allottees of the plot even if they paid the 1/4th deposit amount on the date of auction will loose the said 1/4th deposit amount if they fail to make the entire amount within 6 months from the date of auction and such allottees will be given the receipt in token of having paid the amount.
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> 20. The Assistant Director or Director of Marketing or any other person authorised by him will have right to change or modify or alter the above conditions."

A conjoint reading of the above reproduced clauses makes it clear that the non-deposit of price could entitle the appellant to take over possession of the plots and again put the same for auction. However, there is nothing in the language of these clauses from which it can be inferred that there was an impediment on the passing of resolution by the appellant for extension of time to deposit the balance

price. Therefore, we agree with the learned Single Judge that the appellant could extend the time for deposit of the balance price and resolution dated 23-4-1979 passed by it in the backdrop of the fact that on an earlier occasion the offer made by respondent Nos.1 to 6 to deposit the amount was spurned by the competent authority did not suffer from any legal infirmity. As a corollary, it must be held that Memo dated 15-2-2000 issued by the State Government for registration of plots in favour of respondent Nos.1 to 6 was legally correct and cancellation thereof was wholly unwarranted.

No other point has been argued.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP.No.387 of 2007 filed by the appellant for interim relief is also dismissed.

G.S.SINGHVI, C.J.

8th March, 2007.

C.V.NAGARJUNA REDDY, J.

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